

Appendix A

Victor Stango
Graduate School of Management
University of California, Davis
Davis, California 95616
Email: vstango@ucdavis.edu
Phone: (530) 752-3535
Web: <http://faculty.gsm.ucdavis.edu/~vstango/>

CURRENT POSITIONS

UC Davis Graduate School of Management, Associate Professor, 2010-present
International Journal of Industrial Organization, Associate Editor, 2004-present

EDUCATION

UC Davis (1996), Ph.D. in Economics.
University of Pennsylvania (1991), B.A. in Economics and Political Science.

FIELDS

Household finance, banking, regulation and consumer protection, industrial organization.

JOURNAL PUBLICATIONS

1. "Fuzzy Math, Disclosure Regulation and Credit Market Outcomes: Evidence from Truth in Lending Reform" (with Jon Zinman), *Review of Financial Studies* 24(2), 2011: 506-534.
2. "Strategic Incompatibility in ATM Markets" (with Chris Knittel), *Journal of Banking and Finance* 35(10), October 2011: 2627- 2636.
3. "Some New Evidence on Competition in Payday Lending Markets," *Contemporary Economic Policy*, March 2011: 149-161.
4. "Exponential Growth Bias and Household Finance" (with Jon Zinman), *Journal of Finance* 64(6), December 2009: 2807-2849.
5. "How Does Incompatibility Affect Prices? Evidence from ATMs" (with Chris Knittel), *Journal of Industrial Economics* LVII (3), September 2009: 557-582.
6. "What Do Consumers Really Pay on Their Checking and Credit Card Accounts? Explicit, Implicit and Avoidable Costs" (with Jon Zinman), *American Economic Review Papers and Proceedings* 99 (2), May 2009: 424-429.
7. "Incompatibility, Product Attributes and Consumer Welfare: Evidence from ATMs" (with Chris Knittel), *BE Journal of Economic Analysis and Policy* 8(1) (Advances), 2008.
8. "The Causes of Bargaining Failure: Evidence from Major League Baseball" (with Amy Farmer and Paul Pecorino), *Journal of Law and Economics* XLVII(2), October 2004: 543-568.
9. "Ask Prices, Offers and Time-to-Sale in an Online Exchange" (with Amy Farmer), *Economic Inquiry* 42(1), January 2004: 14-28.
10. "The Economics of Standards Wars," *Review of Network Economics* 3(1), March 2004:1-19.

11. "Price Ceilings, Focal Points, and Tacit Collusion: Evidence from Credit Cards" (with Chris Knittel), *American Economic Review* 93(5), December 2003: 1703-1729.
12. "Strategic Responses to Regulatory Threat in the Credit Card Market," *Journal of Law and Economics* XLVI (2), October 2003: 427-452.
13. "Pricing with Consumer Switching Costs: Evidence from the Credit Card Market," *Journal of Industrial Economics* 50(4), December 2002: 475-492.
14. "Competition and Pricing in the Credit Card Market," *Review of Economics and Statistics* 82(3), August 2000: 499-508.
15. "Environmental Regulation as an Entry Barrier for Small Manufacturing Establishments: A Longitudinal Examination," *Journal of Environmental Economics and Management* 40, 2000: 56-75. (with Tom Dean and Robert Brown).
16. "Ranking Graduate Programs by Graduate Publications," *Economic Inquiry* 38(2), April 2000, 358-367. (with Jeffery T. Collins and Richard G. Cox).
17. "The Tax Reform Act of 1986 and the Composition of Consumer Debt," *National Tax Journal* LII (4), December 1999, 717-739.

WORKING PAPERS AND WORK IN PROGRESS

18. "Celebrity Endorsements, Reputation Risk and Firm Value: Evidence from the Tiger Woods Scandal" (with Chris Knittel). Resubmitted (2nd round), *Management Science*.
19. "Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Overdraft Fees" (with Jon Zinman), NBER Working Paper 17028. In submission.
20. "The Productivity Benefits of IT Outsourcing" (with Chris Knittel).

OTHER PUBLICATIONS

21. "Debit or Credit: How People Choose to Pay" (with Jon Zinman), Research Monograph, Filene Institute, November 2008.
22. "The Economics and Strategy of Standards and Standardization" (with Shane Greenstein), in Scott Shane (ed.), *Handbook of Technology and Innovation Management*: Blackwell, Oxford, UK 2008.
23. "Outsource or Die," (with Jon Zinman), Research Monograph, Filene Institute, August 2007.
24. "Credit Cards," (with Julian Wright), *New Palgrave Dictionary of Economics*: MacMillan, Hampshire, UK, 2007.
25. *Standards and Public Policy* (ed., with Shane Greenstein), Cambridge Press, 2006.
26. "Outsourcing, Firm Size and Product Complexity," (with Yukako Ono), *Federal Reserve Bank of Chicago Economic Perspectives*, 1st Quarter 2005: 2-11.

27. "Emerging Payment Standards and Public Policy," (with Tom Ciesielski and Carrie Jankowski), Federal Reserve Bank of Chicago *Annual Report*, 2004.
28. "The Economics of Standards: Public Policy and Market Performance" (with Carrie Jankowski), Federal Reserve Bank of Chicago *Fed Letter*, August 2004.

GRANTS AND AWARDS

Russell Sage Foundation Grant "Behavioral Biases in Household Financial Decision-making," 2011-2012.
Finalist, UCD GSM Professor of the Year, 2010.
National Science Foundation Grant "Information Technology, Outsourcing and Productivity," 2008-2010.
NET Institute Research Grant, Summer 2004, Summer 2006.
Filene Institute Research Grant "Outsource or Die," 2006-2007.
Filene Institute Research Grant "Payment Choices," 2006-2008.
FDIC Research Grant, 2006.
Allen H. Keally Teaching Award, University of Tennessee, 1999-2000.
Club 6 (High Teaching Evaluations), Haas School, UC Berkeley, 1998.
Finalist, Allen H. Keally Teaching Award, University of Tennessee, 1997-98.

RECENT PROFESSIONAL PRESENTATIONS

"Limited and Varying Attention: Evidence from Shocks..."

American Economic Association Annual Meeting (2011), Kellogg (2010), Federal Reserve Bank of Chicago (2009)

"Homeownership, Consumption and the Housing Wealth Collapse of 2006-2008"

NBER Summer Institute CRIW group (2009)

"What Do Consumers Really Pay on Their Checking and Credit Card Accounts?
Explicit, Implicit and Avoidable Costs"

American Economic Association Annual Meeting (2009)

"Exponential Growth Bias and Household Finance"

Yale Behavioral Science Conference (2008), American Economic Association (2008), UC Davis (2008), Cornell University (2008), Federal Reserve Bank of Chicago (2008), Dartmouth College, Economics Department (2006).

"The Productivity Benefits of IT Outsourcing"

Northwestern (2010), UC, Berkeley (2008), American Economic Association (2008), Federal Reserve Bank of Kansas City (2008), NBER Summer Institute Productivity Group (2007).

"Fuzzy Math, Disclosure Regulation and Credit Market Outcomes"

Stanford University (2008), NBER Summer Institute Law and Economics Group (2008), American Economic Association (2007), UC Berkeley (2006), Georgetown University (2006), Federal Reserve Board (2006), IIOC Conference (2006), Federal Trade Commission (2005).

PAST POSITIONS

UC Davis Graduate School of Management, Assistant Professor, 2008-2010

National Bureau of Economic Research, Research Economist, 2009-2011
Tuck School of Business, Associate Professor, 2004-2008
Federal Reserve Bank of New York, Visiting Senior Economist, 2004
Federal Reserve Bank of Chicago, Economist/Senior Economist, 2001-2003
University of Chicago GSB, Adjunct Assistant Professor, 2001-2003
UC Berkeley, Haas School of Business, Visiting Assistant Professor, 1998
University of Tennessee, Assistant Professor, 1996-2001

COURSES TAUGHT

Microeconomics (undergrad, MBA), Industrial Organization (undergrad, Ph.D.), Competitive Strategy (undergrad, MBA), Government and Business (undergrad, MBA), Public Economics (undergrad).

Appendix B

List of Documents Relied Upon

Public Press

- “BoFA to Boost Rates on Cards With Balances,” *Wall Street Journal*, April 9, 2009, available at <http://online.wsj.com/article/SB123922365800702453.html> (last accessed: June 27, 2012).
- “Businessweek.com Audience,” *Bloomberg*, October 2011, available at <http://bloombergmedia.com/digital/businessweek-com/audience/> (last accessed: June 29, 2012).
- “Credit-Card Mail May Be Boring, But Ignoring It Could Cost You,” *Wall Street Journal*, December 16, 2009, available at <http://online.wsj.com/article/SB10001424052748703438404574597860806674746.html> (last accessed: June 27, 2012).
- “Credit Card Survival Guide,” *Bloomberg BusinessWeek*, September 4, 2007, available at http://www.businessweek.com/bwdaily/dnflash/content/sep2007/db2007091_214837.htm (last accessed: June 28, 2012).
- “Despite Pledge, Citigroup to Raise Credit Card Rates, Blaming ‘Difficult’ Environment,” *New York Times*, November 14, 2008, available at <http://www.nytimes.com/2008/11/15/business/15citi.html> (last accessed: June 27, 2012).
- “Fox Business Audience Profile,” *Fox Business*, March 2011, available at <http://advertise.foxbusiness.com/audience-profile/> (last accessed: June 28, 2012).
- “How to Ask for a Lower Credit Card Rate,” *Fox Business*, March 21, 2011, available at <http://www.foxbusiness.com/personal-finance/2011/03/16/script-ask-lower-credit-card-rate> (last accessed: June 16, 2012).
- “How to Get Your Credit Card Rate Lowered in 5 Steps,” *U.S. News and World Report Money*, February 8, 2012, available at <http://money.usnews.com/money/blogs/my-money/2012/02/08/how-to-get-your-credit-card-rate-lowered-in-5-steps> (last accessed: June 16, 2012).
- “The New York Times Media Kit Online,” *The New York Times*, February 2012, available at <http://nytmarketing.whsites.net/mediakit/online> (last accessed: June 27, 2012).
- “U.S. News Media Kit Audience,” *U.S. News and World Report*, January 2012, available at <http://mediakit.usnews.com/audience.php> (last accessed: June 16, 2012).
- “WSJ.com Audience Profile,” *Wall Street Journal*, May 2012, available at http://www.wsjmediakit.com/downloads/WSJcom_Audience_Profile.pdf?120627032925 (last accessed: June 27, 2012).

Websites

- “2008 Credit Card Survey,” *Consumer Action*, July 22, 2008, available at http://www.consumer-action.org/news/articles/2008_credit_card_survey (last accessed: June 26, 2012).
- “CARD Act Factsheet,” *Consumer Financial Protection Bureau*, February 22, 2010, available at <http://www.consumerfinance.gov/credit-cards/credit-card-act/feb2011-factsheet/> (last accessed: June 26, 2012).
- “Credit Card Rates Rising,” *Consumer Action 2009 Credit Card Survey*, August 12, 2009, available at http://www.consumer-action.org/news/articles/2009_credit_card_survey/ (last accessed: February 29, 2012).
- “Credit Card Terms and Glossary,” *CreditCards.com*, March 11, 2009, available at <http://www.creditcards.com/credit-card-news/credit-card-glossary-terms-first-credit-card.php> (last accessed: June 27, 2012).
- “Credit cardholders have little awareness of changes in their cardholder agreements,” *Institute of Consumer Financial Education*, November 14, 2003, available at http://www.financial-education-icfe.org/financial_news_press_releases/2003/20031114_credit_cardholders_have_little_awareness.asp (last accessed: June 26, 2012).
- “How to Negotiate a Lower Credit Card Interest Rate,” *Squawkfox*, October 24, 2011, available at <http://www.squawkfox.com/2011/10/24/negotiate-credit-cards/> (last accessed: June 16, 2012).
- “How to opt out of credit card rate increases,” *CreditCards.com*, February 12, 2009, available at <http://www.creditcards.com/credit-card-news/opt-out-credit-card-rate-increase-1292.php> (last accessed: June 27, 2012).
- “Still Waiting: ‘Unfair or Deceptive’ Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect,” The Pew Health Group, October 2009, available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/Pew_Credit_Cards_Oct09_Final.pdf (last accessed: June 26, 2012).
- “Universal Default: Gone or Just Hiding out?” *Consumer Action 2007 Credit Card Survey*, May 23, 2007, available at http://www.consumer-action.org/news/articles/2007_credit_card_survey (last accessed: February 29, 2012).
- “Want a lower credit card rate? Just ask,” *Bankrate.com*, April 15, 2002, available at <http://www.bankrate.com/finance/credit-cards/want-a-lower-credit-card-rate-just-ask.aspx> (last accessed: June 27, 2012).
- “What to Say to Lower Your Interest Rates,” *eHow*, available at http://www.ehow.com/info_8032824_say-lower-interest-rates.html (last accessed: June 16, 2012).

Research Reports

- *Deflate Your Rate: How to Lower Your Credit Card APR*, Massachusetts Public Interest Research Group, March 2002.
- *Design and Testing of Effective Truth in Lending Disclosures*, Macro International Inc., May 16, 2007.
- *Design and Testing of Effective Truth in Lending Disclosures: Findings from Qualitative Consumer Research*, Macro International Inc., December 15, 2008.
- *Marketing to Meet Evolving Customer Expectations*, Epsilon, May 2010.
- *Recharging Credit Card Marketing to Meet Evolving Customer Expectations*, Epsilon, July 2010.

J.P. Morgan Chase Documents

SEC Filings

- J.P. Morgan Chase & Co. form 10-K for fiscal year 2001.
- J.P. Morgan Chase & Co. form 10-K for fiscal year 2008.

Press Releases

- “Bank One Completes Wachovia Credit Card Portfolio Purchase,” *J.P. Morgan Chase & Co. Press Release*, July 27, 2001.

Academic Literature

- Agarwal, S., J. Driscoll, X. Gabaix, and D. Laibson (2011), “Learning in the Credit Card Market,” Working Paper.
- Calem, P., and L. Mester (1995), “Consumer Behavior and the Stickiness of Credit-Card Interest Rates,” *The American Economic Review*.
- Rachlinski, J. (2006), “Cognitive Errors, Individual Differences, and Paternalism,” *University of Chicago Law Review*.

Federal Reserve Publications

- Benton, M., S. Meier, and C. Sprenger (2007), “Overborrowing and Undersaving: Lessons and Policy Implications from Research in Behavioral Economics,” *Federal Reserve Bank of Boston Discussion Paper*, No. 2007-4.

- Bricker, J., A. B. Kennickell, K. B. Moore, and J. Sabelhaus (2012), “Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances,” *Federal Reserve Bulletin*, 98:2.
- Durkin, T. A. (2000), “Credit Cards: Use and Consumer Attitudes, 1970–2000,” *Federal Reserve Bulletin*, 86:9.
- Durkin, T. A. (2002), “Consumers and Credit Disclosures: Credit Cards and Credit Insurance,” *Federal Reserve Bulletin*, 88:4.
- Durkin, T.A. (2006), “Credit Card Disclosures, Solicitations, and Privacy Notices: Survey Results of Consumer Knowledge and Behavior,” *Federal Reserve Bulletin*, 92:8, A109–A121.
- Hilgert, M., J. Hogarth, and S. Beverly (2003), “Household Financial Management: The Connection between Knowledge and Behavior,” *Federal Reserve Bulletin*, 89:7.
- Hogarth, J., and E. A. Merry (2011), “Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing,” *Federal Reserve Bulletin*, 97:3.
- Pappalardo, J. K., *Promise and Pitfalls of Consumer Mortgage Disclosures*, Federal Reserve Bank of New York, January 6, 2010, available at http://www.newyorkfed.org/banking/Pappalardo_Promise_Pitfalls_%20of_Consumer_Mortgage_Disclosures.pdf (last accessed: June 16, 2012).

Deposition and Exhibits

- Deposition of Brion Rockwell on June 18, 2012.
- WaMu Preapproval Solicitation (Dkt. # 14-1).
- WaMu Account Agreement (Dkt. # 14-3).
- January 2009 Chase Conversion Letter and Cardmember Agreement (Dkt. # 14-4).
- July 2009 Change in Terms Notice (Dkt. # 14-5).

Appendix C

1 and that's what that writing seemed like to me.

2 Q When you say "that writing," what writing are
3 you referring to?

4 A That -- I don't know the technical term. I
5 guess the agreement that they sent. The really dense
6 thing, like an accordion.

7 Q Is there any particular part of the writing
8 that you are referring to?

9 A Just the whole document just seemed designed
10 to -- to put you to sleep, is the only way I can
11 describe it.

12 Q And which document are you referring to?

13 A The Chase agreement.

14 Q Which agreement?

15 A There was an agreement that comes when you get
16 the credit card, and I think they brought one with a
17 change of terms. And I tried to read it, but it was
18 too difficult to get through.

19 Q Do you remember when you received the
20 agreement?

21 A Not exact dates. Washington Mutual, seems
22 like I got that in 2008. And then Chase bought them,
23 or sucked them up, or whatever they did to them,
24 shortly after. And so I can't remember the exact
25 dates, no.

1 Q Okay.

2 Is the agreement you are referring to one you
3 received from Washington Mutual?

4 A No, I'm talking the agreement -- I probably
5 tried to read the Washington Mutual one. I remember
6 it was like 9.9 percent. That seemed like a pretty
7 good deal. And then it was sold out and Chase sent
8 another one and, you know, I tried to read that, and
9 again it was difficult to read. All you read is kind
10 of the front, where they are kind of -- they seemed to
11 give you a little bit of space where you can read it,
12 and then you get into it, and it becomes dense and
13 difficult to read.

14 Q So you think you probably read the Washington
15 Mutual one, but you are not sure?

16 A I'm not sure.

17 Q Are you sure that you received the Chase one
18 that you just testified about?

19 A I believe I did receive it. I remember they
20 changed the credit card from Washington Mutual to
21 Chase at some point. And it seemed like a --
22 something came and I tried to read it.

23 Q When you say you tried to read it, what did
24 you do?

25 A I sat down, opened it up and tried to go

1 through it. The print -- I don't normally need
2 glasses to read, I need them to drive, but it was so
3 small that I was thinking, well, maybe I should buy a
4 magnifying glass. I didn't have a magnifying glass.
5 I tried to get through -- tried to get through it. It
6 was just like, it was too boring, it was too hard, too
7 dense. It was just -- I mean, maybe I could have got
8 through it, but I would have not comprehended it. It
9 would have been like when you read something, and
10 you maybe see the words, and you can even -- you know,
11 if I had a magnifying glass and see what they are
12 saying. But it's something that was designed to be
13 forgettable, to not be able to comprehend it. That's
14 the way -- that's my opinion of it.

15 Q Did you comprehend any of it?

16 A I could comprehend possibly individual
17 sentences, but the whole -- the whole -- no, I
18 couldn't comprehend it. By the time you got into it,
19 you forget what you [sic] said. That type of writing,
20 you forget what they said two sentences before because
21 it was so -- designed that way.

22 Q And you didn't read through the whole thing?

23 A No, I didn't.

24 Q Did you read past the first sentence?

25 A I probably read the first paragraph, maybe two

1 paragraphs.

2 Q But not beyond that?

3 A No.

4 Q And that's the agreement you are referring to
5 when you say the contract was too dense to read?

6 A Yes. The terms of agreement, I think that's
7 what they call it.

8 Q You also said you thought -- I'm sorry, strike
9 that.

10 You also testified that you are pursuing a
11 claim that the agreement was unfair.

12 A Right.

13 Q What did you mean by that?

14 A It just seems like, that they agreed when I --
15 I have a credit card. I -- I think I put 4- or \$5,000
16 on it at 9.9 percent, then Chase bought it and said,
17 No, sorry, it's actually -- what you just paid for
18 will be 16.9 percent.

19 Q When did you --

20 A It was like buying a car. You agree to
21 5 percent interest rate at 5,000, you paid off it for
22 a month, and they -- it was like, you know, raised the
23 bar. Or a house. It seems like -- or a house, you
24 bought a house for, you know, 100,000 and -- at a
25 5 percent interest rate, and then in the middle of

1 didn't know what to do at that point. Sometimes you
2 go through life and you mull things over for a while,
3 so...

4 Q I'm sorry, what is it that you read in the
5 newspaper that Chase was doing?

6 A They were kicking people off. Upping rates
7 and kicking people off and demanding full payment when
8 they closed their accounts.

9 Q When who closed their accounts?

10 A When Chase closed their credit card accounts.
11 It was widely, widely important in the news at that
12 point.

13 Q What point was that?

14 A During that era, about the time -- it seems
15 like during -- when Chase took over Washington Mutual.
16 You remember all the stuff that was happening. But it
17 was widely reported that Chase was closing down
18 accounts, trying to -- basically demanding payment for
19 some accounts.

20 Q Do you recall any specific newspaper you read
21 that in?

22 A New York Times.

23 Q Any others?

24 A Maybe the Wall Street Journal.

25 Q Any others?

1 A Online. I read a lot of stuff online. The
2 Huffington Post possibly, The Nation possibly.

3 Q Do you subscribe to the New York Times?

4 A I used to, but I read it online now.

5 Q What about the Wall Street Journal?

6 A No, I read that occasionally. In hotels they
7 have it.

8 Q During that period, if you read about
9 something like this in the New York Times, would you
10 have read it in a hard copy delivered to your house or
11 online?

12 A At that time I would have read it online.

13 Q What about the Wall Street Journal?

14 A I would maybe occasionally read the -- both of
15 them. Besides online, I occasionally might read them
16 in a coffee shop and online. I think Wall Street
17 Journal started charging, so I -- I can't remember
18 when I stopped reading that online.

19 Q What about The Nation, did you subscribe to
20 The Nation?

21 A No.

22 Q So if you read about something like this in
23 The Nation, it would have been --

24 A Online.

25 Q -- online?

1 A Yeah.

2 Q Did you ever clip any newspaper articles or
3 Internet pages --

4 A No.

5 Q -- and save them?

6 A No.

7 Q Now, I asked you if you knew whether you had
8 an opportunity to opt out of the increase in your
9 APR --

10 A Uh-huh.

11 Q -- and you responded by mentioning these
12 newspaper articles.

13 A Okay.

14 Q Are you saying that because you had read
15 something in the newspaper, you understood that you
16 couldn't opt out?

17 A I understood that if I opted out they possibly
18 would demand the 5,000 I owed them on the spot, and I
19 didn't have 5,000, so...

20 Again, this was all stuff that was gathering,
21 as information in my head, wondering what to do. You
22 know, you don't -- sometimes things aren't black and
23 white, it takes a while.

24 Q And when was this that you were --

25 A This was -- I can't remember the exact dates.

1 Q Was this after you noticed the APR increase on
2 your credit card statement?

3 A Some of the stuff was coming -- I can't
4 remember the exact dates, but because I -- whether
5 I -- I looked at it one day and that day I read an
6 article, I don't know.

7 Q Am I correct that other than things you may
8 have read in newspapers, there was no other reason why
9 you might have thought you couldn't opt out of the APR
10 increase?

11 A I'm not sure I understand the question.

12 Q Let me ask it in a simpler way. Was there any
13 other reason you thought you were unable to opt out of
14 the APR increase?

15 A I don't know.

16 Q So you can't identify any other reason?

17 A No, I can't remember right now.

18 Q Okay.

19 You didn't read anything about it in any other
20 source, other than newspapers online, Huffington Post,
21 The Nation?

22 A All I remember is that time there was a lot of
23 stuff coming out about it. And things I mentioned, it
24 could have been more; it could have been less. But it
25 was information that was out there widely in this

1 country, widely reported in this country, and many
2 sources. And unless you totally don't read, it would
3 have been impossible to not read something about it or
4 hear something on the television.

5 Q Was it your understanding that you could opt
6 out of an APR change but that you might be required to
7 pay off your balance more quickly or immediately?

8 A It was my understanding that they would --
9 they were actively calling in loans, and what that
10 meant to me was that -- that they would demand 5,000,
11 and I didn't have 5,000. The possibility that they
12 would demand 5,000.

13 Q When you say "calling in loans," what loans --

14 A They were shutting credit cards down from
15 what -- what was being reported in the news, and
16 demanding full payment.

17 Q If it had turned out that your understanding
18 was incorrect, that Chase was not going to require
19 immediate repayment of your loan, but would allow you
20 to repay your outstanding balance on the terms of your
21 existing cardmember agreement, would you have opted
22 out under those circumstances?

23 A I'm not sure what the question is. You're
24 saying if they didn't -- if they had kept the original
25 terms?

1 Q If you had been permitted to pay off your
2 balance at the old interest rate, 9.99.

3 A If at that -- in full at that point?

4 Q Over time.

5 A Over time?

6 Q Under the terms of your existing cardmember
7 agreement.

8 A If they wouldn't have -- you're asking me if
9 they would not have raised it, my rates, would I have
10 filed a lawsuit? No, I would not have.

11 Q I wasn't asking whether you would have filed a
12 lawsuit, I was asking whether you would have opted out
13 of the APR increase. In other words, closed your
14 account, in exchange for which you would have been
15 permitted to pay off your existing balance at the old
16 9.99 APR?

17 A Oh, I don't know. I didn't know that was -- I
18 don't know, because I didn't know that was an option.

19 Q You thought it wasn't an option because of
20 what you had read in the newspaper; is that right?

21 A Right. You're asking me this question. This
22 is the first time that I had never -- heard and even
23 thought about this, so I don't know. My answer is I
24 don't know. I mean it's a question that I have never
25 even considered. You're the first person that -- so I

1 don't know.

2 Q Would you have thought that such a proposal
3 was unfair?

4 A I don't know. I -- I'm not sure, again, what
5 you are asking me. Break it up again.

6 Q Suppose you had \$100 balance on your credit
7 card.

8 A Uh-huh.

9 Q And it's at a 9.99 APR under the terms of your
10 credit card agreement. And the bank says to you, If
11 we are going to permit you to continue to use your
12 card, we are going to have to increase your APR on new
13 charges and your existing balance, but you have the
14 right to reject that change. If you reject it, you
15 will be permitted to pay off your existing balance at
16 the 9.99 APR under all of the other applicable terms
17 of your existing cardmember agreement, but you won't
18 be able to use your card anymore, you are going to
19 have to close your account.

20 A I don't know, I don't know right now.

21 Q You don't know whether that's unfair or not?

22 A No, it seems -- as you present it, it seems
23 possibly fair. I didn't know that there was that
24 possibility.

25 MR. LESSER: Why don't we take a --

Rockwell v. Chase Bank

Brion Rockwell

Page 54

1 we've been going for more than an hour. Why don't we
2 take a break.

3 MR. ODELL: Okay.

4 THE VIDEOGRAPHER: Going off the record.
5 The time now is approximately 10:57 a.m.

6 (A brief recess.)

7 THE VIDEOGRAPHER: Going back on the
8 record. The time now is approximately 11:12 a.m.

9 Q Mr. Rockwell, do you have a checking account?

10 A Yes, I do.

11 Q Which bank?

12 A BECU.

13 THE VIDEOGRAPHER: Mr. Lesser...

14 MR. LESSER: Oh.

15 Q Is that the only checking account you may have
16 currently?

17 A I think I might have a second one, if it
18 hasn't been closed. It's inactive. They changed the
19 name of the bank, so I can't remember the name of that
20 bank. It could be active or not, I don't know.

21 Q Have you ever had a Chase --

22 A Yes, I did.

23 Q -- checking account?

24 A Yes, I did.

25 Q When was that?

1 were required to keep lending you additional money?

2 A I'm not sure I understand the question.

3 Q Did you have an expectation that the credit
4 card issuers leading up to your bankruptcy were
5 obligated to allow you to charge more money to your
6 card?

7 A I don't think so. I think they were -- by the
8 time I declared bankruptcy, I didn't do it -- it had
9 been a couple years since probably most of these debts
10 had occurred, and I didn't know -- I didn't file the
11 second. Probably a couple years had passed before
12 most of these debts -- two or three years, and I
13 didn't know what to do about it, so finally I thought
14 maybe bankruptcy was the best way to do it.

15 Q Had the -- had the credit card issuers closed
16 the accounts --

17 A Yes, they did.

18 Q -- to any charges?

19 A Yeah.

20 Q When did they do that?

21 A Probably in -- I -- I can't remember, but my
22 guess, best guess would be approximately around 2002,
23 possibly.

24 Q And that seemed reasonable to you?

25 A Did what seem reasonable?

1 Q For a credit card bank to say to someone in
2 your situation, We're not going to lend you any more
3 money under these circumstances?

4 A Um, yeah.

5 Q Why does that seem fair?

6 A Why does it seem fair?

7 Q Yes.

8 A Because I couldn't repay.

9 Q Suppose one of those banks had said to you
10 under those circumstances, We would be willing to
11 allow you to charge additional charges to your
12 account, but based on your circumstances and the risk
13 associated with doing that, we can only do it by -- if
14 we raise your APR on both new and existing charges.
15 You don't have to do it, but that's the offer?

16 A I don't know. I don't really understand the
17 question.

18 Q That's not something you have thought about?

19 A No. I mean, I don't know what you are -- if
20 you want to rephrase that. I don't know what you are
21 asking, really.

22 Q No --

23 A Okay.

24 Q -- I'll withdraw it.

25 MR. LESSER: Let's do Tab 7.

1 A Yes.

2 Q When did you open the Capital One card?

3 A Approximately, I don't know, maybe two years
4 ago. Two or three years ago.

5 I had a secured -- after my bankruptcy, I had
6 a secured credit card through Evergreen, and then got
7 the unsecured Washington Mutual. And at some point, I
8 wanted to close that secured -- unsecured one because
9 I understood that you can build your credit back up
10 better if you had a couple of secured -- or unsecured
11 credit cards.

12 Q So the Cap One card is unsecured?

13 A Right.

14 Q Is that why you opened that Cap One account?

15 A To try to -- yeah, to try to -- I was told
16 that if you had two credit cards, you could build your
17 credit back up.

18 Q Who told you that?

19 A I don't know. I don't know. I was -- I can't
20 remember.

21 Q Financial advisor?

22 A I can't remember, but I was told by somebody
23 who said, Oh, open up another one. Maybe -- I can't
24 remember. Probably a financial person, I don't know.

25 Q Where would the financial person have been?

1 that up. If -- if you weren't making your payments or
2 if they pull a credit report, I guess they can. Okay.

3 Q Have you ever -- aside from the Chase account
4 that we've been taking about for the most part today,
5 have you ever had a credit card bank increase your
6 APR?

7 A I -- I can't remember.

8 Q It might have happened but you can't recall?

9 A I can't recall.

10 Q And say in 2007, did you have any expectation
11 about whether that could happen?

12 A 2007?

13 Q Yes.

14 A When I had the secured credit card?

15 Q Well, you had had all these prior credit cards
16 before your bankruptcy, then you had the secured card.
17 Did you have any -- I understand you can't recall
18 whether it had ever happened to you, but in 2007, did
19 you have any expectation one way or the other about
20 whether a credit card bank could increase your APR?

21 A In 2007, I think -- I don't think I had even
22 thought about credit cards. I had recently gone
23 through bankruptcy. I think that was when I first got
24 my secured one, so that's the only thing I thought of.
25 I didn't think I had access to credit cards at that

1 point, besides the secured ones. So I don't think I
2 would have thought too much about credit cards in
3 general in 2007, except for the one that I had.

4 Q What about in 2008?

5 A The question again, what would I have thought,
6 what have I generally thought about credit card rates?
7 I -- I can't say that I could -- that I would know
8 about that. I mean it's a question that I don't
9 understand. If I would have generally, walking down
10 the street, thought about credit card rates, if that's
11 the question, no.

12 Q We are almost out of time on this tape --

13 A Okay.

14 Q -- so we will have to stop, but just to return
15 to a couple of things.

16 You described reading in newspapers some
17 information you understood about Chase --

18 A Right.

19 Q -- and what might happen if an account were
20 closed. Do you recall whether the situations
21 described there were situations where the bank closed
22 an account?

23 A Yes, the -- yes. Again, this isn't just one
24 little article, it was all over the news in several
25 sources. I mean, you couldn't get away from it if you

1 MR. LESSER: Why don't we take a break.

2 THE WITNESS: All right.

3 THE VIDEOGRAPHER: Going off the record.

4 The time now is approximately 12:07 p.m. This is the
5 end of Disk No. 1 in the deposition of Brion Rockwell.

6 (Lunch recess.)

7 THE VIDEOGRAPHER: Going back on the
8 record. The time now is approximately 12:53 p.m.
9 This is the beginning of Disk No. 2 in the deposition
10 of Brion Rockwell.

11 Q Mr. Rockwell, would you agree that when you
12 use a credit card, the bank that issued the card
13 extends you credit?

14 A Yes.

15 Q And would you agree that you entered into a
16 series of contracts when the bank approved your
17 purchases or cash advance?

18 A Yes.

19 Q And that was true of your WaMu card before it
20 was converted to a Chase card?

21 A Yes.

22 Q And true of the card after Chase acquired it
23 and it was converted?

24 A The card after Chase that was converted?

25 Q After Chase acquired your WaMu account and

1 converted it to a Chase --

2 A Right.

3 Q -- account?

4 A Yes.

5 Q Still true?

6 A Uh-huh.

7 Q What are the terms of the contract you enter
8 into with the bank when it approves a purchase?

9 A What are the exact terms? They agree to pay
10 it back.

11 Q Any other terms?

12 A I'm not sure what the question is.

13 Q Well, it's an open-ended question. Are there
14 any other terms that come to mind --

15 A No. That you -- I think extend you credit and
16 you pay it back. It's usually at a monthly payment.

17 Q And what determines the terms under which you
18 have to repay the money you borrow?

19 A The bank. It's not usually something you
20 negotiate with them, that I've seen.

21 Q Is it written down somewhere?

22 A Yeah, they send you this little dense packet.
23 And so they seem to have this form they send you, that
24 seems un -- that's pretty much unreadable, but you
25 want the credit, so I guess you sign it.

1 That's my answer.

2 Q That's the cardmember agreement you are
3 referring to?

4 A I think so. I can't remember all the titles,
5 any titles.

6 Q Okay.

7 And when you opened your WaMu account, you had
8 a cardmember agreement?

9 A Yes, I believe so.

10 Q And that cardmember agreement set forth the
11 terms that governed the contract that was formed when
12 you used your card?

13 A Yeah, there seemed to be like two phases: One
14 that's pretty big, and you can actually read it, and
15 there's -- on the back, and then there's a more dense
16 one that, if I recall, is like several pages of tiny
17 writing. One's normal writing, like might be out of a
18 newspaper; one is writing about that small.

19 Q And when Chase acquired your account and
20 converted it to a Chase account, you received a new
21 cardmember agreement --

22 A Yes, I think I did.

23 Q -- from Chase?

24 A Yeah.

25 Q And those were the terms that governed your

1 card from that date on, from the effective date of --

2 A I would --

3 Q -- that cardmember agreement?

4 A I would agree with that, probably.

5 Q Now, did you form any expectations about the
6 terms of the contract you formed when you used your
7 card based on the cardmember agreement?

8 A I don't recall having any expectations, except
9 that I believe I remembered it being a zero
10 introduction, then up to 99 point -- 9.9 percent.

11 Q Do you recall whether you read the WaMu
12 agreement when you opened the account?

13 A Again, I remember reading -- I seem to
14 remember there was a two-part. One was a larger one,
15 and I would -- probably got through that, but I don't
16 think I remember getting through the other one. You
17 start reading -- I probably started it, but it was --
18 I mean the only word I can use is sleepy; it makes you
19 sleepy to try to read that.

20 Q And when Chase sent you a new cardmember
21 agreement --

22 A Uh-huh.

23 Q -- is that the one you testified about
24 earlier, that you may have read the first paragraph or
25 so but couldn't get through more than that?

1 A I can't remember what I testified, but I
2 probably -- most documents I'll take a look at, try to
3 read in general, if I'm opening anything. But if
4 it -- when it's that dense, it's just too difficult to
5 read. I mean, it's just -- again, I think I might
6 have -- I recall -- you can read individual sentences,
7 but you start reading on, then it seems to be designed
8 so I can't remember the thing, the paragraph before.
9 And writing like that is really difficult to read.

10 Q Given that, is it fair to say you didn't rely
11 on anything in that agreement in using your card?

12 A I don't recall. I don't recall relying on
13 that.

14 Q You don't know one way or the other?

15 A Yeah, I don't recall relying on that.

16 Q You don't claim that you did, in any event?

17 A I'm not sure what your question is.

18 Q You're not claiming that you did rely on it,
19 you just don't remember one way or the other?

20 A Right.

21 Q Do you have any business relationships with
22 Mr. Odell?

23 A No.

24 Q With Mr. Harrod?

25 A No.

1 Q My question is: Would you agree that someone
2 else might think that was fair?

3 A I can't speak -- speak for -- for the whole
4 world, but I think a lot of people would think it's
5 unfair. I think a lot of people think it's unfair,
6 yeah.

7 Q What is it that --

8 A Unfair that you have an amount and an agreed
9 upon interest rate, and after you've spent that, they
10 jack up their rate for the stuff that you had already
11 agreed on an interest rate.

12 Q To be clear, I'm talking about a circumstance
13 where the bank allows you to refuse the increase.

14 A I don't understand the question.

15 Q What we talked about earlier was a
16 circumstance where the bank says to the cardholder, If
17 you would like to continue using your card, as a
18 condition of doing that, new charges and your existing
19 balance will be subject to a higher APR, but you don't
20 have to accept that change. If you don't want to
21 accept that change, you merely have to close your
22 account and stop using the card.

23 A Without having to pay it off in full?

24 Q Pay off the existing balance under the old
25 terms.

1 A That seems reasonable.

2 Q And would you agree that other people might
3 think that was reasonable as well?

4 A I don't know.

5 Q Do you claim in this case that Chase violated
6 any law?

7 A No, I think they wrote the law.

8 Q Regardless of who wrote the law, do you --

9 A No, I don't believe they did. I think they
10 wrote the law, but I don't think they violated it. I
11 might add, there's this new law they are trying to
12 pass. They are re -- they are writing that too, even
13 though it was passed by Congress. Writing that as we
14 speak.

15 Q Are you able to identify any statute that you
16 believe Chase violated?

17 A No.

18 Q When you originally opened your credit card
19 account with WaMu --

20 A Uh-huh, yes.

21 Q -- did you receive a solicitation?

22 A Yes, I did.

23 Q Did you receive it in the mail?

24 A Yes, I did.

25 Q You opened it?

1 it's very clear and with words you can read. You go
2 to the second page, or the back, and you -- you would
3 need a magnifying glass to read this.

4 Q Well, I understand the way --

5 A I'm just pointing it out. You showed it to
6 me. I'm showing what it is for the court.

7 Q The text is a little blurry. I think that's
8 because of the way it was copied.

9 A It's a different size, too. See? It's
10 probably like five times smaller.

11 Q You don't dispute that this is the
12 solicitation you responded to?

13 A I can't remember one way or the other. You
14 know, this looks possible.

15 Q Okay.

16 A When was that? It was several years ago.

17 Q Did you read the solicitation?

18 A This?

19 Q The entire thing, the two pages.

20 A Again, the back -- I mean, it was several
21 years ago, I can't recall. I mean this is what --
22 this is what they want you to read, right here, and
23 back here it gets a lot more dense. So whether I read
24 it, I can't remember.

25 Q Just so I can get a clear answer, you don't

Rockwell v. Chase Bank

Brion Rockwell

Page 118

1 recall whether you read it?

2 A This particular -- as this is set up, I don't
3 recall this particular document, but it is very
4 possible that this is the exact sample that they sent
5 me. Sometimes I can't recall a novel that I read, you
6 know, two years ago.

7 Q I'm really just trying to get a simple answer
8 to a simple question.

9 Do you recall whether you read it or not?

10 A This?

11 Q Yes, this document, Exhibit 6.

12 A It's possible. I answered that like four
13 times. It's possible I read this.

14 Q But you don't know?

15 A I don't know. To say did I read this -- was
16 this ex -- in my memory, that I read this exactly the
17 way this was done? I -- I can't recall that, no.

18 Q All right.

19 Do you see on the second page under the header
20 Terms and Conditions, it says, Annual percentage rate,
21 APR for purchases, zero percent through your statement
22 date in April 2009, introductory period, after that
23 9.99 percent? In the first box.

24 A Oh, yes, I see that.

25 Q And then under that there's a box, Other APRs,

1 A My testimony is that is very small.

2 Q That's not my question. I'm asking you
3 whether you are able to read it or not.

4 A There's some words I can read and some of
5 it -- it might be because it's a combination of
6 blurry, that there's some words that I can read and
7 some that I can't.

8 Q Are you testifying that I read it incorrectly?

9 A No, I don't know. No, I'm not. I'm saying
10 it's a lot smaller than this, which I can read easily.

11 Q Do you have an under -- I've read that to you.
12 I will represent to you that I read it correctly.

13 A Okay.

14 Q Do you have an understanding of what that
15 means?

16 A Could you read it again, please?

17 Q We may change the APR, fees and other terms of
18 your account at any time to the extent permitted by
19 applicable law and the account agreement, which we
20 will send you when your account is opened.

21 A I do now, after going through this, what that
22 means.

23 Q What do you think that means?

24 A I guess it means the law that the banks wrote,
25 saying they can jack up the interest rates at any

1 point. Which is now supposed to be -- a law that's
2 supposed to be remedied, which they are trying to get
3 right now, too.

4 Q Okay.

5 And then it goes on. It says, Factors we may
6 consider in determining whether and how to change your
7 terms include the frequency and severity of defaults
8 and other indications of overall credit risk.

9 Do you have an understanding of what that
10 means?

11 A I understand if -- for -- what I seem to
12 understand what you are saying is that you can make
13 your payments on time and have decent credit, but if
14 someone else has bad credit, they are going to raise
15 your interest rates.

16 Q And that's one of the terms of the agreement?

17 A That appears to be, if what you are reading is
18 right. If you're reading it correctly, that's what it
19 seems to be saying, yeah.

20 Q And below that there's some language about the
21 default APR. Each time you default on this, or any
22 Washington Mutual credit card account, because you
23 failed to make at least the minimum payment when due,
24 exceed your credit line, or make a payment --

25 A Can't read it?

1 Q -- to us that is not honored by your bank, we
2 may increase the APR on your account up to a maximum
3 of the default APR.

4 A I heard what you said, but I don't understand
5 what they are saying. If you explain it.

6 Q Well, I think you testified earlier that you
7 understood that the bank could increase the APR in the
8 event of a default.

9 A Oh, okay. The way you explained it concisely,
10 yeah, I can understand that.

11 Q And that was part of the agreement as well?

12 A Right. But you -- you explained it in a more
13 concise way than the agreement did.

14 (Exhibit No. 7 marked.)

15 Q Now, Exhibit 7, which is placed in front of
16 you, has a header Pre-Approval Request Form. You will
17 see that some information is blacked out on this
18 version. It's because it was filed in court.

19 Does that appear to be your signature?

20 A Yes, it is.

21 Q And do you recall signing this document?

22 A I mean I don't exactly recall the second I
23 signed it. I recall signing -- responding to that
24 offer, yes.

25 Q Okay.

1 A (Complies.)

2 (Exhibit No. 9 marked.)

3 Q This is Exhibit 9. It's the Washington Mutual
4 account agreement that is referenced in the
5 solicitation that we looked at --

6 A Yes.

7 Q -- a moment ago.

8 Do you recall reading this?

9 A Not all the way through. I don't recall
10 reading this.

11 Q Is this the document that you thought you
12 might have read a paragraph or two of?

13 A Yeah.

14 Q And other than this agreement, did you read
15 any other account agreements from Chase at any time?

16 A I can't recall.

17 Q Okay.

18 I understand that you didn't read it -- well,
19 I won't characterize your testimony, but based on
20 whatever review of the document you did at the time,
21 did you have any understanding of any of the terms in
22 it?

23 A No.

24 Q Okay. Put it aside.

25 A (Complies.)

1 I'm sorry.

2 Would you agree that someone else reading this
3 provision would have been better able to interpret it
4 than you?

5 A I think I'm above average in intelligence. I
6 would guess -- if you're asking me to guess, I would
7 guess that most people would not read this through and
8 get to Page 6 and find that.

9 Q Okay.

10 A Maybe some would. I would say -- I would
11 guess the majority of customers would not read that
12 through and get to that.

13 Q Would not read it and get to it?

14 A Get to it. Yeah, get to it. And whether you
15 understand it, I don't know.

16 Q Would you agree that some people would get to
17 it and some wouldn't?

18 A Anything is possible.

19 Q You don't know one way or the other?

20 A I don't know. I would guess -- I would guess
21 that most people -- this thing coming, and these
22 things, it's not even on one page. These little
23 categories they have, that most -- I would guess that
24 most people would not read this.

25 Q Isn't it true that someone's understanding of

1 the terms of this agreement would depend on whether
2 they read it or not?

3 A I think it's designed not to read it, and it's
4 hard to understand, and it's dense, and it puts you to
5 sleep. Someone who has written in the past, this
6 writing, it seems designed to put someone to sleep. I
7 mean, it's as simple as that.

8 Q Isn't it true that someone's understanding of
9 the terms of this agreement would depend how much of
10 it that they read?

11 A Possibly. But again, you would have to go
12 back over it several times and highlight stuff. And,
13 you know, it's like -- it's not designed to be easily
14 understood.

15 Q Isn't --

16 A I took Composition 101, and this is not --
17 this is not -- would be considered acceptable writing.

18 Q Isn't it true that someone's understanding of
19 the terms of this agreement would depend on their
20 ability to comprehend the language that's in the
21 agreement?

22 A Taken as a whole, try to read the whole thing,
23 I would think very few people could read this thing
24 without spending a lot of time going back over it,
25 reading it several times, making notes, to really

1 at before? It's the third full page.

2 A Okay.

3 Q Panel 6. And it's under -- it's under Account
4 Changes. It says, If a change is made that increases
5 the APR or APRs that apply to your account, you will
6 be given an opportunity to avoid the change by closing
7 your account and paying off any existing balance under
8 the terms in effect prior to the change.

9 Do you see that?

10 A I heard you read it, yes. Oh, it's the one
11 with the large block writing here? In here?

12 Q It's below that, right above No. 10.

13 A Okay.

14 Q Isn't it true that that language is saying
15 that if the bank proposes to increase the cardholder's
16 APR, the cardholder will be given an opportunity to
17 avoid that increase by closing the account and will be
18 permitted to pay off the existing balance under the
19 terms in effect prior to the change?

20 A The question is pay it off in one lump sum or
21 pay it off in payments? I can't tell from what you
22 said.

23 Q Well, it says, Under -- Under the terms in
24 effect prior to the change.

25 A Right.

1 Q You just don't know what those terms are?

2 A Right.

3 Q And you didn't read this at the time?

4 A No.

5 MR. LESSER: How long have we been
6 going?

7 THE VIDEOGRAPHER: An hour and four
8 minutes.

9 MR. LESSER: Do you want to take a
10 break? We've been going for a while.

11 THE WITNESS: I don't care.

12 MR. ODELL: Sure, we can take a break.

13 MR. LESSER: Okay. Let's take a little
14 break.

15 THE VIDEOGRAPHER: Going off the record.
16 The time now is approximately 1:57 p.m.

17 (A brief recess.)

18 THE VIDEOGRAPHER: Going back on the
19 record. The time now is approximately 2:24 p.m.

20 (Exhibit No. 10 marked.)

21 Q You have in front of you Exhibit 10.

22 A Uh-huh.

23 Q It's some WaMu account statements from 2008 --

24 A Uh-huh.

25 Q -- from your account; is that right?

1 claim and what you expected Chase could and
2 couldn't -- could and could not do with respect to
3 APRs. Does -- does the amount of a proposed APR
4 increase with a right to opt out affect your view on
5 whether the proposed increase is fair?

6 A I think the big question is, is proposed -- I
7 think my -- your question is can they raise their
8 rates? I mean my question -- I think it's fair to
9 propose a rate change ahead of time on stuff you
10 haven't purchased, but to me it seems unfair to raise
11 it on something that you have already purchased at a
12 certain rate. Just my opinion.

13 Q If the cardholder doesn't have a right to
14 reject the change?

15 A I'm sorry? I'm getting a little tired, so I
16 guess I --

17 Q Understood. Strike that. Strike that
18 question.

19 A Okay, okay.

20 Q Does it matter whether the proposed rate
21 increase is very large or very small? Suppose the
22 proposed rate increase is .5 percent.

23 A You're asking my opinion, if it's fair for
24 them to raise .5 percent on purchases that you have
25 already made? I --

1 Q In 2009.

2 A If that's the --

3 Q I'm actually asking you about your --

4 A Maybe that's the question. My opinion, it's
5 not fair, but that's just -- you know, it's my
6 opinion.

7 Q Okay.

8 And was that your -- would that have been your
9 expectation in 2009?

10 A At 2009 I had -- I don't know what
11 expectations I had.

12 Q Okay.

13 A I mean, I wasn't -- I don't think I had -- I
14 thought about that much, in all honesty, until -- you
15 know, until it happened.

16 Q Okay.

17 (Exhibit No. 11 marked.)

18 Q I have placed in front of you a document
19 marked Exhibit 11. It's a letter from Chase. I
20 understand it doesn't have your name on it, but I will
21 represent to you that it was -- it's the form of a
22 letter that was sent to you in January 2009.

23 A Uh-huh.

24 Q Do you recall receiving it?

25 A Again, it's a long time ago. I recall

Rockwell v. Chase Bank

Brion Rockwell

Page 140

1 something from Chase, yes.

2 Q Did you read it?

3 A I can't recall.

4 Q Okay. Is --

5 A Let me read it right now and just see if it...

6 Q Sure.

7 A (Reviews document.)

8 I cannot recall this exact letter, but this is
9 something that I possibly would have -- would have
10 read all the way through.

11 Q Okay.

12 A It refers to the whole agreement. If that was
13 that same thing, I probably wouldn't have read it.

14 Q If it refers to the whole agreement, you
15 probably would not have read the cardmember agreement?

16 A Yes.

17 Q It also refers to a notice of change in terms.
18 Would you have read that?

19 A If it was presented like this, as a letter
20 like this. If it was that dense little package, no, I
21 would not have read it.

22 Q Okay.

23 Now, you'll see in the bold language on the
24 page, it says, A Notice of Change in Terms, which
25 explains the changes to the cardmember agreement and

1 document that was enclosed with -- with the letter
2 that we just looked at --

3 A Okay.

4 Q -- as Exhibit 11.

5 Do you see there's a section -- first of all,
6 seeing it doesn't refresh your recollection about
7 whether you read it or not?

8 A Okay.

9 Q You still believe you would not have read this
10 document?

11 A Right. I can't remember this particular
12 document, no.

13 Q Okay.

14 Do you see under Summary of New Terms,
15 Section 1?

16 A Oh, okay. I see Summary of New Terms, yes.

17 Q It says, Changes you can choose not to accept.

18 A Your account will be governed by Delaware.

19 Q Do you see that?

20 A Uh-huh.

21 Q So the account is now governed by Delaware
22 law, to the extent that federal law does not control.

23 A Right.

24 Q Do you see that?

25 You wouldn't have known what Delaware law was

1 at the time?

2 A At the time, no, but I do now.

3 Q What is Delaware law now?

4 A Well, I just -- I'm aware that a lot of these
5 credit card companies are in Delaware, or that's where
6 it [inaudible]. You said this -- mine was actually
7 Nevada, but -- that they basically went in there and
8 wrote the laws.

9 Q Do you know anything specific about what the
10 laws say?

11 A No, I'm just -- what I read is just they went
12 in and -- into Delaware and South Dakota, the articles
13 I read, that kind of had a -- with the local
14 politicians and rammed it through before anybody was
15 even aware what was going on. And -- but the Supreme
16 Court has ruled that -- what Delaware law is. I'm
17 not -- and I'm citing -- that has been challenged in
18 Supreme Court and it has been found to be legal.

19 Q Okay.

20 A It was underhanded, the way it was done, from
21 what I read. But basically the banks went in and
22 wrote their law and the politicians went along with
23 it.

24 Q Do you see at the bottom there's a section
25 called Right to Opt Out? And it says, You can opt

1 out, in parentheses, not accept, closed parentheses,
2 the changes described under Section 1 in the summary.

3 Do you see that?

4 A Is that toward the top of it or toward the
5 bottom of that paragraph?

6 Q It's at the bottom of the page.

7 A (Reviews document.)

8 Q Do you see that?

9 A Yeah, I'm trying to read it.

10 (Reviews document.)

11 Okay. I'm trying to wade through it, but
12 again, it's -- it gets confusing to me.

13 Q In any event, you didn't read it at the time?

14 A I don't think so.

15 Q If you had read it and understood that you had
16 a right to opt out, would you have done something
17 differently?

18 A I don't know, I'm reading it right now, and
19 even the way this is written, I don't know if I would
20 understand it. It seems to start out being kind of
21 understandable. By the last sentences they started
22 to -- it starts getting confusing, the way it was
23 written.

24 You were previously notified of any of the
25 changes described in the notice, and they were already

1 in effect on the account, those terms will not become
2 applied. Any [inaudible] APR remains subject to the
3 terms of the blah, blah, blah.

4 It just doesn't seem very concise writing.

5 Q Is it possible that somebody else reading it
6 would understand it?

7 A Possibly.

8 Q Is it possible that someone else reading this
9 might opt -- have opted to close their account?

10 A I don't know.

11 Q You don't know one way or the other?

12 A Yeah.

13 Your account will be closed, then in
14 parentheses, if not already closed. I mean that
15 just -- just dead-ends the sentence. Just like what
16 are they saying? Then you may not use it for -- I
17 just...

18 (Exhibit 13 marked.)

19 Q All right. You have in front of you
20 Exhibit 12.

21 MR. ROISMAN: 13.

22 Q 13, sorry. Exhibit 13. It's a cardmember
23 agreement. I will represent to you that this is the
24 form of cardmember agreement that was enclosed with
25 the letter that's marked as Exhibit 11.

1 A Uh-huh, yes.

2 Q This is the -- the document you testified a
3 moment ago you would not have read; is that right?

4 A Right, yes.

5 Q So you don't recall --

6 A I don't recall --

7 Q -- reading this document?

8 A -- this document, no.

9 Q Can I ask you to turn to Page 6?

10 A Six in their agreement or 6 in the --

11 Q Six in the agreement.

12 A Okay.

13 Q And there's a section called
14 Default/Collection. Do you see that?

15 A Yes.

16 Q It says, We may consider you to be in default
17 if any of these occur. And then there are a number of
18 bullets.

19 A Uh-huh.

20 Q And those bullets include: We do not receive
21 at least the minimum amount due by the date and time
22 due as shown in your billing statement; you exceed
23 your credit line; you fail to comply with the terms of
24 this agreement or any agreement with one of our
25 related companies; you obtain information that causes

1 us to believe you may be unwilling or unable to pay
2 your debts to us or to others on time; you file for
3 bankruptcy, or you become incapacitated, or in the
4 event of your death.

5 Do you see that?

6 A Yes.

7 Q And if you turn to Page 9, again, the
8 pagination in the agreement.

9 A Uh-huh.

10 Q There's a paragraph with the bold header,
11 Changes to This Agreement.

12 A Yes.

13 Q You didn't read this at the time?

14 A No.

15 Q It says, We can change this agreement at any
16 time regardless of whether you have access to your
17 account by adding, deleting or modifying any
18 provision. Our right to add, delete or modify
19 provisions includes financial terms such as the APRs
20 and fees, and other terms such as the nature, extent
21 and enforcement of the rights and obligations you or
22 we may have relating to this agreement.
23 Modifications, additions or deletions are called
24 changes or a change.

25 Do you see that?

1 A Yes.

2 Q And then it says, We will notify you of any
3 change if required by applicable law. These changes
4 may become -- may be effective with notice only at the
5 time stated in our notice in accordance with
6 applicable law. Unless we state otherwise, any change
7 will apply to the unpaid balances on your account and
8 to new transactions.

9 Do you see that?

10 A Yeah. It's a perfect example of what I'm
11 saying. It's just like, oh, you're reading and I'm
12 falling asleep.

13 Q And then it goes on to say, The notice will
14 describe any rights you may have with respect to any
15 change and the consequences if you do or do not
16 exercise those rights. For example, the notice may
17 state that you may notify us in writing by a specified
18 date if you do not want to accept certain changes we
19 are making. If you notify us in writing that you do
20 not accept the changes, your account may be closed, if
21 it is not already closed, and you will be obligated to
22 pay your outstanding balance under the applicable
23 terms of the agreement.

24 Do you see that?

25 A Yes.

1 Q Now, that's saying for certain types of
2 changes, the cardholder will be provided an
3 opportunity to opt out, right?

4 A If you say so. Again, I'm not trying to make
5 a joke about this, but it's just your mind wanders.
6 You read it, when I am hearing you read it, it's hard
7 to focus on what you are saying.

8 Q Is it fair to say somebody else reading this
9 paragraph might be able to understand it?

10 A Perhaps.

11 Q Okay.

12 If you had read this at the time, would you
13 have done anything different?

14 A I don't know.

15 Q Okay. Put it aside.

16 A (Complies.)

17 (Exhibit 14 marked.)

18 Q You have in front of you a document marked as
19 Exhibit 14.

20 A Okay.

21 Q I realize it doesn't have your name on it, but
22 I will represent to you that this is a form of a
23 document that was sent to you in or around July 2009.

24 A Okay.

25 Q Do you see at the bottom, in the first page,

Rockwell v. Chase Bank

Brion Rockwell

Page 151

1 with the pagination of the document itself, there's a
2 date, 07/09. Do you see that?

3 A On the right?

4 Q Yeah.

5 A Okay. So lower right I see that there's a
6 date there.

7 Q Okay.

8 Is this -- is this the type of -- well, let me
9 ask you: Do you recall receiving this document?

10 A No.

11 Q Is this the type of document that you would
12 have read had you received it?

13 A No. But, you know, I -- it's the type of
14 document -- this looks familiar to the type of
15 document that you get, yes.

16 Q Okay. You can put it aside for now.

17 A Okay.

18 (Exhibit No. 15 marked.)

19 Q So this is Exhibit 15. It's an account
20 statement. Do you see your name on it?

21 A Yes.

22 Q And it's got a payment due date of
23 February 18th, '09.

24 A Okay.

25 Q Do you see that?

1 Q It might be easier if you clear some of these
2 away.

3 A I've got 24, 25, 26. Oh, there's 27.

4 Q That's a -- Exhibit 27 has -- is a statement
5 with a payment due date of January 16, 2010.

6 A Right.

7 Q Do you see that?

8 A Right.

9 Q And on all of these statements the APR on
10 purchases is 16.24 percent. To be clear, when I say
11 "all of these," on Exhibits 25, 26 and 27 --

12 A Correct.

13 Q -- the APR on purchases is 16.24 percent.

14 A Yes.

15 Q And do I understand your testimony to be that
16 you don't know which one of these statements is the
17 one that caused you to notice the APR?

18 A Yeah, I just remembered it was one of these.
19 Sometime around the holidays is when I first noticed
20 it.

21 Q It would have been one of these three.

22 When you noticed the APR was 16.24 percent on
23 purchases, did you call the bank?

24 A I don't recall that, no.

25 Q Did you go to a branch?

1 A I can't remember.

2 Q Did you --

3 A I remember -- actually, I started doing kind
4 of -- this is when -- this is when -- it seemed like I
5 recall when this was happening and when this stuff
6 started becoming in the news. And from there I
7 started reading about it. The first time I was aware
8 of it, I can't remember ever going to a branch or
9 calling them about it.

10 Q This is -- so this is the time period when you
11 read about the --

12 A I became aware of it, yes. I mean it was
13 probably out there, but I think I seen some -- it
14 might have been a PBS show with Elizabeth Warren, or
15 something like that. I can't remember. Or on MSNBC.
16 Somehow I saw Elizabeth Warren, or I started reading
17 articles about it.

18 Q I don't think you mentioned that before.
19 Previously you mentioned --

20 A I said everything. It was all over the
21 television and I said newspapers. I didn't say who.

22 Q Just let me finish my question, because I want
23 the testimony to be as clear as possible.

24 A Okay.

25 Q Earlier, you testified about reading in the

1 New York Times, the Wall Street Journal, maybe the
2 Huffington Post, maybe The Nation, about bank
3 practices, including Chase, at some point in time.

4 A I believe -- I believe --

5 Q I'm sorry, let me finish the question.

6 A Sorry.

7 Q Are you testifying now that this is around the
8 time when you were reading those materials, meaning
9 in -- somewhere between November 2009 and January
10 2010?

11 A Yeah, I testified I -- you know, I'm on the
12 computer, on the Internet. And whether it was that
13 stuff that was being written that day, I can't
14 remember, but it was stuff on the Internet. You know,
15 at some point I saw Elizabeth Warren being
16 interviewed. I can't remember the exact dates.

17 Q But it was around this time frame, meaning the
18 time frame of these account statements that we are
19 looking at?

20 A I believe it was, yes. But I can't -- what
21 I'm saying is I can't remember if it was me doing the
22 research, looking at -- Googling it, or if I -- if it
23 was coming up live. But it seemed like there was a
24 lot on it, once I turned my attention to it.

25 Q Other than a TV show with Elizabeth Warren, do

1 you remember anything else you saw on TV?

2 A I don't remember any specific thing, but I
3 just remember it coming out of the TV. I can't
4 remember what dates or anything like that.

5 It seemed like it was a pretty big discussion.
6 You know, with newspapers, I can't remember the exact
7 dates, but I just -- I can't remember exact dates on a
8 lot of things, but there was a lot of discussion
9 around this period of that law that they were trying
10 to pass, which they did kind of pass, about what was
11 happening and what the banks were trying to do.

12 Q I'm not trying to --

13 A I know.

14 Q -- force you to recall specific dates. I
15 understand that you can't do that. I just want to be
16 clear that it's around this -- this time period of
17 these statements, Exhibits 25, 26 and 27?

18 A And maybe -- yeah, I mean it might have
19 started earlier. There's just been a lot of
20 discussion of it over the last few years, and I can't
21 remember exactly. But when I noticed this over the
22 holidays, I know I became more aware of it.

23 Q When you noticed that your APR had increased
24 to 16.24 percent --

25 A Yes.

1 A Okay. Yes, I see that.

2 Q Did you consider whether to use any of that
3 money to pay off your -- part of your credit card
4 balance?

5 A No, because that would have probably went for
6 rent.

7 Q Do you recall receiving a new cardmember
8 agreement in January 2010?

9 A I can't recall any specific time that anything
10 came in the mail.

11 MR. LESSER: Let's do that one, Tab 14.

12 (Exhibit No. 31 marked.)

13 Q You have in front of you a document marked as
14 Exhibit No. 31. It's a cardmember agreement. I will
15 represent to you that it was sent to you in or around
16 January 2010.

17 Seeing it, does it refresh your recollection
18 as to whether you received it?

19 A No, it looks -- you know, it looks like all
20 the other ones. You know, they all kind of blur
21 together.

22 Q By January 2010, if you -- if you did receive
23 this, would you have been surprised to be receiving a
24 new cardmember agreement from Chase?

25 A I can't remember what my reaction was.

Rockwell v. Chase Bank

Brion Rockwell

Page 182

1 Q Well, it was at least the third time you had
2 received new terms on this account alone; is that
3 right?

4 A Yeah, by then I just -- nothing they did
5 surprised me.

6 Q So the more often a bank has changed the terms
7 on your account, the less likely you would be
8 surprised by that happening?

9 A I don't know.

10 Q Is that fair?

11 A I don't understand how it -- the question, is
12 it fair?

13 Q I'm just saying is that a fair
14 characterization?

15 A No, it just seems like you get a lot -- a lot
16 of these in the mail, and they are all written like
17 this, so I'm not surprised when they come, no.

18 Q Is part of the reason you're not surprised
19 because you had gotten them before?

20 A Yeah, and they all look exactly the same.

21 Q While he's putting those together, Exhibit 31,
22 the January 2010 cardmember agreement, this is not
23 something you would have read?

24 A No.

25 Q You don't dispute, do you, that the terms in

1 FURTHER EXAMINATION

2 BY MR. LESSER:

3 Q Exhibit 14, you testified you didn't read this
4 at the time.

5 A Right.

6 Q And in the sentence you just read in response
7 to Mr. Odell's question, it says, To the extent
8 allowed by law. It says, In addition, to the extent
9 allowed by law, we may require you to pay the
10 outstanding balance immediately or at any time after
11 your account is closed, right?

12 A Right.

13 Q Isn't it true, you don't know what the law
14 allows?

15 A No, I don't know what the law allows.

16 Q You don't know if the applicable law would
17 allow Chase to require immediate repayment of an
18 outstanding balance?

19 A Well, I assume if they are making a point of
20 that, that the law that they probably have written
21 does allow that at that point. I'm making an
22 assumption.

23 Q You don't know?

24 A No, I don't know, but I'm assuming that they
25 have written that law to do that. That's all I'm

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRION ROCKWELL,

Plaintiff,

v.

CHASE BANK,

Defendant.

No. 2:10-cv-01602 RSL

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2012 I caused to be served a copy of the following documents on the person(s) named below in the manner and addressed indicated:

1. Chase Bank USA, N.A.'s Opposition to Plaintiff's Motion for Class Certification
2. Declaration of Victor Stango in Support of Defendant's Opposition to Motion
3. Declaration of Noah Levine in Support of Defendant's Opposition to Motion
4. Declaration of Dominic Giannangeli in Support of Defendant's Opposition to Motion
5. Declaration of Suzanne Morgan in Support of Defendant's Opposition to Motion
6. Certificate of Service

Russell M. Odell Attorneys at Law 251 153rd Place SE Bellevue, WA 98007 <u>RussellOdell@msn.com</u>	<input checked="" type="checkbox"/> by CM/ECF <input type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
R. Bruce Harrod 22522-A 88th Avenue W. Edmonds, WA 98026 <u>brucedarleneharrod@hotmail.com</u>	<input checked="" type="checkbox"/> by CM/ECF <input type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery

CERTIFICATE OF SERVICE
No. 2:10-cv-01602

000088

1 DATED this 2nd of July, 2012 at Seattle, Washington.

2
3 s/ Lynn Sandahl

4 Lynn Sandahl

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 CERTIFICATE OF SERVICE - 3
CASE NO. 2-10-cv-01602

119439.0006/5429705.6

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

000089